

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

TEXAS HEALTH AND HUMAN	§	
SERVICES COMMISSION	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 3:15-cv-3851
	§	
UNITED STATES OF AMERICA,	§	
UNITED STATES DEPARTMENT	§	
OF STATE, JOHN KERRY in his	§	
Official Capacity as SECRETARY OF	§	
STATE, UNITED STATES	§	
DEPARTMENT OF HEALTH &	§	
HUMAN SERVICES,	§	
SYLVIA BURWELL, in her Official	§	
Capacity as SECRETARY OF	§	
HEALTH AND HUMAN SERVICES,	§	
OFFICE OF REFUGEE	§	
RESETTLEMENT, ROBERT CAREY,	§	
in his Official Capacity as Director	§	
of the OFFICE OF REFUGEE	§	
RESETTLEMENT, and	§	
INTERNATIONAL RESCUE	§	
COMMITTEE, INC.	§	
	§	
Defendants.	§	

PLAINTIFF’S OPPOSITION TO MOTION TO DISMISS BY DAVID GOAD

TO THE HONORABLE JUDGE OF SAID COURT:

The Texas Health and Human Services Commission (“Commission”) files this response to the Motion to Dismiss filed by David Goad (Dkt. No. 27). The Motion to Dismiss suffers from substantive and procedural flaws. Substantively, the Motion complains that the Attorney General and the attorneys on the signature block are not admitted to practice in the Northern District of Texas. (Dkt. No. 27 at 1, 2-3). But

the Motion fails to account for the fact that Local Rule 83.11 expressly exempts attorneys appearing on behalf of the Attorney General of the State of Texas from the requirement of filing a *pro hac vice* motion. N.D. Tex. R. 83.11. Nonetheless, General Litigation Division Chief Angela Colmenero is admitted to practice in the Northern District of Texas. Additionally, the Motion is procedurally flawed in that only a party may move to dismiss under Rule of Civil Procedure 12. *See* Fed. R. Civ. P. 12(b) (providing that “a party may assert the following defenses by motion”); *Bormio Investments, Inc. v. USBC Bank USA Nat. Ass’n*, 574 F. App’x 417, 418 (5th Cir. 2014) (“Rule 12(b)(6) permits a party to move to dismiss if a plaintiff has failed ‘to state a claim upon which relief can be granted.’”). David Goad is not a party.

PRAYER FOR RELIEF

For the foregoing reasons, the Commission respectfully requests that the Motion to Dismiss filed by David Goad be denied.

Dated: January 5, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this pleading was served on all counsel of record listed below via e-mail and/or through this Court's CM/ECF system. Mr. Goad has been served via U.S. Mail.

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